that the plaintiff had such knowledge, they should find a verdict for the defendant." Is this sound law?

Black in his new work on Law and Practice in Accident Cases (sec. 329), says: "Contributory negligence is usually a question of fact for the jury, in view of all the facts and circumstances proven in the case." This is true even if the plaintiff knew of the danger (Id.). At sec. 349, the same author says: "It is not contributory negligence *per se* to use a highway, street or bridge that is known to be defective, unless the danger was so apparent that in the use of ordinary care, one ought not to have undertaken the passage. . . . . Whether one using a highway or street, with knowledge of the defects, is guilty of contributory negligence, is usually a question for the jury." (Id.).

In *Williamsport* v. *Lisk* (Ind.), 1 Mun. Corp. Cases, 60; *Id.* 483-4, 490; it is said: "Knowledge of a defect does not necessarily preclude a recovery."

In the case of *Gordon* v. *Richmond*, 83 Va. 436, the court says: "Passer has a right to presume the streets and sidewalks to be in safe condition, and is not required to be observant of their condition. And though he has actual knowledge of their bad condition, their use by him is not *per se* negligence, and does not impose upon him the exercise of extraordinary care."

Black's Law & Practice in Accident Cases, sec. 349, says: "Whether one using a highway or street, with knowledge of the defects, is guilty of contributory negligence, is usually a question for the jury. Previous knowledge of a defect, although it has an important and oftentimes decisive bearing on the question, is not conclusive, and the plaintiff may recover, notwithstanding." See also 7 Am. and Eng. Ency. L. (2d ed.) 412: "Contributory negligence is usually a question of fact for the jury, in view of all the facts and circumstances proven in the case." (Black, sec. 329). See Beach on Contributory Negligence (3d ed.), chap. 16, sec. 444, *et seq.*; Shearm. & Redf. on Negligence (5th ed.), sec. 114; Thomas on Negligence, p. 365, and especially Black, sec. 279.

In view of these authorities and numerous others that could be cited, has not the court laid down the rule too broadly in holding that previous knowledge constitutes contributory negligence *per se*? I am not counsel in the case, but have watched it with interest, and would like to have the views of the profession on this question through the REGISTER.

Winchester, Va. A. J. TAVENNER.

A CORRECTION.

Editor Virginia Law Register:

DEAR SIR—My attention has been called to stypographical error in the report of the case of *Marshall* v. *Valley R. Co.*, 97 Va. 653, 659, which may mislead some of the profession. In line fourteen from the top of page 659 the word "now" should be "not," so as to make the sentence read "As the trial court set the verdict aside, the case is *not* before us as upon a demurrer to the evidence," &c. I take this method of calling attention to the error in the hope that each lawyer will at once make the proper correction in his official report. The case is correctly reported in 5 Va. Law Reg. 624, and, on account of the above error, will be re-reported in 99 Va. Respectfully,

M. P. BURKS.